IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No. 1146 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOKILABEN W/O YUVRAJ SAHEBRAO

Versus

YUVRAJ SAHEBRAO SURVAYANSHI

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Appearance :

MS KJ BRAHMBHATT with Ms. VARSHA BRAHMBHATT for Applicant

MR RAJESH K KANANI for Opponent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 20/09/2005

ORAL JUDGMENT

1 This application under Section 24 of the Civil Procedure Code is preferred by wife against her husband for transferring Hindu Marriage Petition No.44 of 2005 pending on the file of the Family Court at Ahmedabad to the Court having jurisdiction in Surat City.

2 As per brief facts of the case, marriage between the parties solemnized at Surat according to Hindu rites and customs on 16th of March, 2002. For some time marriage life went smoothly, and according to allegation made by the wife, opponent and his parents started ill-treating her on the ground of dowry. Out of this wedlock, there is a son, aged about 27 months today. It is an allegation that at the time of the birth of son, the opponent or his family did not take any care. The wife i.e. present applicant, before son was born, according to allegation, was driven out of the house of the opponent. She requested to let her resume her home at in-laws, but to deaf ears. It is the allegation that opponent is serving as Head Constable in Gujarat Police and, therefore, he tried to suppress and impress upon the family members of the applicant. Instead of bringing the applicant and her son to matrimonial home, she received notice of Advocate on 14.12.04 making false allegations and averments, which was replied by her on 11th of January, 2005, and thereafter she received

notice of said Hindu Marriage Petition No. 44 of 2005 on 19th of January 2005 claiming conjugal rights. Thereafter, the applicant preferred a Criminal Application No. 13 of 2005 before learned JMFC at Surat under Section 125 of the Criminal Procedure Code and, hence, on the following grounds, the transfer of the Hindu Marriage Petition No. 44 of 2005 is sought from Family Court at Ahmedabad to the competent Court at Surat.

3 It is stated that the applicant apprehends great danger to her life in attending court at Ahmedabad because on earlier occasions the opponent and his parents had administered threats to her.

4 The distance between Surat where the applicant at present residing with her parents is very long and she had to travel along with her 21 months old son on each date of hearing. Since her mother is not keeping good health, is not able to accompany her, and that her parents are not that financial sound to meet with the expenses of three/four persons on each date.

5 That the applicant cannot keep her 21 months old son at Surat to attend the court at Ahmedabad, and if she takes her son at Ahmedabad, there is likelihood that she would be separated from her son.

6 It is the say of the applicant that the opponent is not paying anything towards maintenance and the applicant is non-working woman and has no source of income. She herself along with her son are totally dependent on her parents, whose financial position is not good.

7 The applicant states that she has filed application under Section 125 of the the Code of Civil Procedure at Surat and if this Hindu Marriage Petition is transferred, both can be tried at one place.

8 To the averments made by the applicant, the opponent has replied on oath that he denies all the allegations made in the application. It is alleged

that the application is filed with mala fide intention of harassing the opponent. It is alleged that the applicant wife wanted to live a care free life and often quarreled with the opponent and his old parents and insisted for separate residence, to the extent that the opponent was pressurized by the applicant to settle at Surat, and when opponent being man of principles, refused to surrender, the applicant voluntarily left matrimonial home and, therefore, after resorting to all modes of persuasion through reputed persons, as a last resort, the opponent had to file the Hindu Marriage Petition No. 44 of 2005. It is stated that the opponent is government servant, discharging his duty as a Police Officer at most sensitive police station of Ahmedabad, and is expected to attend his duty at different hours in different shifts. Therefore, it would not be possible for the opponent to attend the court at Surat on each dates forgetting about his crucial duty, and transferring said the Hindu Marriage Petition, would result in gross injustice. The applicant after stating false facts and alleging

against old parents of the opponent, has preferred this application and, hence, the applicant does not come with clean hands and, therefore, the application deserves to be dismissed in the interest of justice. The opponent has limitations of his job and has to look after his old dependent parents, therefore, the balance of convenience is in favour of the opponent. Ultimately, it is requested to dismiss the petition.

9 The applicant has preferred affidavit-in-rejoinder to the reply of the opponent where in she has denied in toto the allegations made in the reply by opponent.

10 Learned Advocate Ms. K.J. Brahmbhatt for the applicant and learned Mr. Kanani for the opponent were heard at length.

11 Relying upon certain decisions of the Hon'ble Apex Court, learned Advocate for the applicant stated that the convenience of the wife is paramount

consideration for transferring the matter from Family Court at Ahmedabad to the Court at Surat as it would be totally inconvenient for the wife to attend the court at Ahmedabad for the above grounds, which will deprive her of the right to defend such Hindu Marriage Petition. Learned Advocate Mrs. Brahmbhatt submitted that there are reasonable grounds to transfer the Hindu Marriage Petition No. 44 of 2005 to the court at Surat and balance of convenience is in favour of the applicant.

12 On the other hand, learned Advocate for the opponent Mr.Kanani stressed upon the history of the litigation wherein he stated that it is the wife who deserted the opponent and went to Surat to pressurize opponent to leave his old parents and to settle at Surat. It is stated that the grounds advanced are totally baseless for transfer of this Hindu Marriage Petition to the Court at Surat, as firstly, there cannot be any apprehension in the mind of the wife as no occasion has taken place wherein the wife is threatened of her life. Had it been so, the wife

might have filed complaints before competent authorities. On the contrary, the opponent has sincerely attempted to settle the matrimonial dispute amicably through prominent persons of the caste and other influenced persons, but the applicant wife has remained adamant, and there was no other alternative for opponent husband except to prefer said Hindu Marriage Petition to save her matrimonial life. It is stated that the applicant and her family is well-to-do and can attend the court at Ahmedabad and she would not be required to stay over-night at Ahmedabad as the distance between Surat and Ahmedabad is about four to four and half hours, and further that, she would not be required to attend on each date. It is, therefore, urged that this application under Section 24 of the Civil Procedure Code to transfer the Hindu Marriage Petition is required to be dismissed.

13 Having heard learned counsels for the parties, and having gone through the record it appears that, at this juncture, this court is not required to go

into the details as to how volcanic eruptions marred matrimonial life of the parties and who deserted whom. As those issues shall be decided by the competent court when the same will be raised, nor it is necessary to go into the details at whose fault the Hindu Marriage Petition is filed which is sought to be transferred under Section 24 of the Civil Procedure Code. It is only to be seen that how the interest of justice can best be served, whether by transferring of litigation or refusing the same. While exploring this goal of justice, it is necessary to find out in whose favour balance of convenience stands.

14 Having perused the grounds advanced in the application as well as urged before this Court, it is clear that the applicant – wife has made out grounds for transfer of the said Hindu Marriage Petition from Ahmedabad to Surat. A citizen of India is, by fundamental right, entitled to defend a litigation filed against him or her. When a member of a weaker section of the society has to defend a

litigation especially a matrimonial matter, her convenience must be particularly and seriously looked into. At this juncture, it cannot be entered into whether the apprehension caused in the minds of the wife that her life is in danger or she would be deprived of her son is correct or false, but enough it is to say that, there is reasonable apprehension of such kind in the mind of the wife. Surat is at distance from Ahmedabad and it would certainly be inconvenient for wife to attend Family Court on concerned dates with her 27 months old son even if she is accompanied by somebody from her parental home. This would result in deprivation of her right to legitimately defend matrimonial proceedings filed against her. As against that, the defence that the opponent is serving in Gujarat Police and would not be able to attend court at Surat is ground less as he may engage advocate at Surat and attend personally the court whenever it is only required by the court. This view is fortified by the decisions of the Supreme Court in the matter of THEJA V NAGARJUNA vs. V NAGRJUNA, as reported in (2000) 9 SCC 453; in the

matter of DEEP vs. ANIL PANIKER, as reported in (2000) 9 SCC 441; in the matter of SEEMA vs. RAKESHKUMAR as reported in (2000) 9 SCC 271; in the matter of MONA ARESH GOEL vs. ARESH SATYA GOESL, as reported in (2000) 9 SCC 255; in the matter of JAISHREE BANERJEE (SMT) vs. ABHIRUP BANERJEE, (1997) 11 SCC 107 and in the matter of RAJWINDER KAUR vs. BALWINDER SINGH as reported in (2003) 11 SCC 726.

15 In view of above, this application is allowed and Hindu Marriage Petition No. 44 of 2005 pending before the Family Court at Ahmedabad is directed to be transferred to the District Court at Surat and the District Judge, Surat, shall allot this Hindu Marriage Petition to the court of competent jurisdiction for disposal according to law. Family Court at Ahmedabad is directed to transfer the Record and Proceedings of Hindu Marriage Petition No. 44 of 2005 to the District Court at Surat. Rule made absolute.

(J.R.VORA, J.)

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